

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
Connect America Fund) WC Docket No. 10-90
ETC Annual Reports and Certifications) WC Docket No. 14-58
Telecommunications Carriers Eligible to Receive) WC Docket No. 09-197
Universal Service Support)
Connect America Fund – Alaska Plan) WC Docket No. 16-271
Expanding Broadband Through the ACAM) RM-11868
Program)

ORDER

Adopted: December 20, 2023

Released: December 20, 2023

By the Chief, Wireline Competition Bureau:

1. In this Order, the Wireline Competition Bureau (Bureau) denies a waiver request submitted by NTCA—The Rural Broadband Association (NTCA) seeking waiver of section 54.308(e) of the Commission’s rules, which requires carriers that have elected to receive Enhanced Alternative Connect America Cost Model (A-CAM) support to certify and submit their initial cybersecurity and supply chain risk management plans by January 2, 2024 or within 30 days of approval under the Paperwork Reduction Act (PRA), whichever is later. However, we also clarify that if an Enhanced A-CAM carrier submits a cybersecurity risk management plan that complies with the draft National Institute of Standards and Technology (NIST) Framework for Improving Critical Infrastructure Cybersecurity (CSF) version 2.0 (2.0) (Draft 2.0 Framework), the Enhanced A-CAM carrier will have met the requirement to file an initial plan that reflects the latest version of the NIST framework. If the final version of NIST CSF 2.0 changes the Draft 2.0 Framework so that compliance with the final version would require a substantive modification to the Enhanced A-CAM carrier’s cybersecurity risk

1 47 CFR § 54.308(e); Emergency Petition for Waiver of NTCA—The Rural Broadband Association, WC Docket No. 10-90 et al. (filed Nov. 17, 2023) (NTCA Petition for Waiver).

2 47 CFR § 54.308(e)(2); Connect America Fund et al., WC Docket No. 10-90 et al., Report and Order et al., FCC 23-60, at 47, para. 109 (July 24, 2023) (Enhanced A-CAM Order). This Order does not address the issues raised in petitions seeking reconsideration and/or clarification of requirements related to the cybersecurity and supply chain risk management plans. See Petition for Clarification and/or Reconsideration of the Blooston Rural Carriers, WC Docket No. 10-90 et al. (filed Sept. 18, 2023); Petition for Reconsideration and/or Clarification of NTCA—The Rural Broadband Association, WC Docket No. 10-90 et al., at 21 (filed Sept. 15, 2023). Those petitions remain pending. We note that, because the Commission does not yet have approval under the Paperwork Reduction Act, we anticipate that the initial cybersecurity and supply chain risk management plans will be due no sooner than early February 2024.

3 47 CFR § 54.308(e)(4); Enhanced A-CAM Order at 47-48, para. 111.

management plan, the carrier will be required to submit an updated plan consistent with the Commission's rules.⁴

I. BACKGROUND

2. In the *Enhanced A-CAM Order*, the Commission required Enhanced A-CAM carriers to implement operational cybersecurity and supply chain risk management plans by January 1, 2024—the start of the Enhanced A-CAM support term.⁵ The Commission also required carriers to certify they have done so and submit such plans to the Universal Service Administrative Company (USAC) by January 2, 2024 or within 30 days of approval under the PRA, whichever is later.⁶ Because the rules are still undergoing the Office of Management and Budget's PRA approval process, we anticipate that the deadline for Enhanced A-CAM carriers to certify and submit their initial plans will not be until early February at the earliest.⁷ However, Enhanced A-CAM carriers must still implement operational plans by January 1, 2024.⁸ If an Enhanced A-CAM carrier fails to submit the plans and make the certification by the deadline, or does not have in place operational plans at any time during the support term, the Bureau will direct USAC to withhold 25% of monthly support until the carrier comes into compliance.⁹

3. Enhanced A-CAM carriers' cybersecurity and supply chain risk management plans must meet certain requirements.¹⁰ Relevant here, the cybersecurity plans must reflect the latest version of NIST CSF.¹¹ While the latest version of NIST CSF is version 1.1 (1.1), NIST expects to release an updated version, 2.0, "early in 2024."¹² If an Enhanced A-CAM carrier makes a substantive modification to its plans, it must submit its updated plan to USAC within 30 days of making the modification.¹³ A substantive modification includes, among other changes, updates that are made to comply with new cybersecurity regulations, standards, or laws.¹⁴

4. *Request for Waiver.* NTCA filed a petition for waiver requesting that Enhanced A-CAM carriers instead be permitted to certify and submit their initial cybersecurity and risk management plans by the later of the deadline for 2024 FCC Form 481 submissions, i.e., July 1, 2024,¹⁵ or within 30 days of approval under the PRA.¹⁶ NTCA claims that because the release of version 2.0 of NIST CSF is expected "early in 2024," it would be burdensome for carriers to have to submit an initial cybersecurity risk management plan that complies with NIST CSF 1.1, and then have to submit an updated version of the

⁴ 47 CFR § 54.308(e)(6); *Enhanced A-CAM Order* at 48-49, para. 112.

⁵ 47 CFR § 54.308(e)(1); *Enhanced A-CAM Order* at 47, para. 109.

⁶ 47 CFR § 54.308(e)(2); *Enhanced A-CAM Order* at 47, para. 109.

⁷ See Federal Communications Commission, Information Collection Being Submitted for Review and Approval to Office of Management and Budget, 88 Fed. Reg. 81416 (Nov. 22, 2023).

⁸ 47 CFR § 54.308(e)(1); *Enhanced A-CAM Order* at 47, para. 109.

⁹ 47 CFR § 54.308(e)(3); *Enhanced A-CAM Order* at 47, 49, paras. 109, 112.

¹⁰ 47 CFR § 54.308(e)(4), (5); *Enhanced A-CAM Order* at 47-48, para. 111.

¹¹ 47 CFR § 54.308(e)(4); *Enhanced A-CAM Order* at 47, para. 111.

¹² NIST, Cybersecurity Framework Questions and Answers, <https://www.nist.gov/cyberframework/frequently-asked-questions/framework-basics> (last visited Dec. 18, 2023) (NIST Cybersecurity Framework Questions and Answers).

¹³ 47 CFR § 54.308(e)(6); *Enhanced A-CAM Order* at 48-49, para. 112.

¹⁴ 47 CFR § 54.308(e)(6); *Enhanced A-CAM Order* at 49, para. 112.

¹⁵ 47 CFR § 54.313(j).

¹⁶ See generally NTCA Petition for Waiver.

plan within 30 days if compliance with NIST CSF 2.0 results in substantive modifications to their initial plans.¹⁷

II. DISCUSSION

5. Generally, the Commission's rules may be waived for good cause shown.¹⁸ Waiver of the Commission's rules is appropriate only if both: (1) special circumstances warrant a deviation from the general rule, and (2) such deviation will serve the public interest.¹⁹

6. We deny NTCA's request for waiver of the deadline to certify and submit initial cybersecurity and supply chain risk management plans. We find that it would not serve the public interest to wait until July 1, 2024 or later to require the submission of the plans. NTCA's proposal would delay the Commission's ability to ensure that Enhanced A-CAM carriers have the plans in place—which carriers would have implemented several months prior—to offer broadband over reasonably secure networks and to monitor the carriers' continued compliance with these requirements. The Commission's adoption of the cybersecurity and supply chain risk management plan requirements “emphasize[s] the critical importance of cybersecurity and supply chain risk management in modern broadband networks”²⁰ By adopting a deadline for the initial submission of plans as close as possible to the start of the Enhanced A-CAM carriers' support terms on January 1, 2024, the Commission will be able to identify soon after the support term starts whether any Enhanced A-CAM carriers have failed to meet the requirements and withhold support to help ensure compliance. Although Enhanced A-CAM carriers' service milestones do not begin until December 31, 2026 and their performance requirements pre-testing does not begin until January 1, 2026,²¹ some Enhanced A-CAM carriers will be receiving support to maintain existing service and/or may deploy service to consumers faster than required, and the Commission has emphasized the importance of ensuring that the networks it supports through Enhanced A-CAM have sufficient protections in place.²²

7. Moreover, while NTCA claims that the release of NIST CSF 2.0 may require Enhanced A-CAM carriers to submit updated plans soon after their initial submissions,²³ no definitive release date has been set.²⁴ Moreover, given the evolving environment, the risk of carriers having to update plans soon after the initial submission may be present regardless of when the Commission sets the deadline for initial submissions.²⁵ The Commission has acknowledged the burdens Enhanced A-CAM carriers may face in complying with these requirements as many are small companies with limited resources.²⁶ To

¹⁷ See *id.* at 3-4, 6.

¹⁸ 47 CFR § 1.3.

¹⁹ See *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1157-59 (D.C. Cir. 1969), *cert. denied*, 93 S.Ct. 461 (1972)).

²⁰ *Enhanced A-CAM Order* at 47, para. 109.

²¹ NTCA Waiver Petition at 4-5 (citing 47 CFR § 54.320(c), (d); *Connect America Fund: A National Broadband Plan for Our Future High-Cost Universal Service Support et al.*, Order, WC Docket No. 10-90 et al., Order, DA 23-778 (WCB Aug. 30, 2023)).

²² See, e.g., *Enhanced A-CAM Order* at 31, 47-49, paras. 73-74, 109-14.

²³ NTCA Waiver Petition at 3-4.

²⁴ NIST Cybersecurity Framework Questions and Answers.

²⁵ See 47 CFR § 54.308(e)(6); *Enhanced A-CAM Order* at 48-49, para. 112 (describing various conditions that would constitute a substantive modification).

²⁶ See *Enhanced A-CAM Order* at 49, para. 113. See also NTCA Waiver Petition at 4-5 (claiming that requiring Enhanced A-CAM carriers to submit their plans by the deadline “creates an unnecessary and entirely avoidable burden”).

help alleviate those burdens, the Commission explained that it took “steps to mitigate concerns that development and implementation of cybersecurity plans are expensive and time consuming,” including by giving carriers the “flexibility to include standards and controls in their cybersecurity management plans that are reasonably tailored to their business needs.”²⁷ The Commission also directed carriers to existing federal resources to help facilitate the creation of the required plans.²⁸ The burdens associated with submitting these plans by the required deadline are outweighed by the Commission’s interest in being able to timely monitor Enhanced A-CAM carriers’ implementation of requirements that “will improve the cybersecurity of the nation’s broadband networks and protect consumers from online risks such as fraud, theft, and ransomware that can be mitigated or eliminated through the implementation of accepted security measures.”²⁹

8. However, to further reduce these burdens, we also clarify that if an Enhanced A-CAM carrier submits a cybersecurity risk management plan that complies with the Draft 2.0 Framework, the Enhanced A-CAM carrier will have met the requirement to implement a plan that reflects the latest version of the NIST framework.³⁰ The Draft 2.0 Framework has been available since early August 2023—weeks before the Bureau announced the offers of Enhanced A-CAM support, and NIST is not planning to release another draft prior to releasing the finalized framework.³¹ The Draft 2.0 Framework encompasses the current NIST CSF 1.1 so that if an Enhanced A-CAM carrier submits a plan that reflects the Draft 2.0 Framework, the plan will also reflect NIST CSF 1.1.³² Nevertheless, if the finalized NIST CSF 2.0 makes changes to the Draft 2.0 framework that require an Enhanced A-CAM carrier to make a substantive modification to its cybersecurity risk management plan, the Enhanced A-CAM carrier must submit an updated plan within 30 days of making the substantive modification as required by the Commission’s rules.³³

III. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 5(c), and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 254, and sections 0.91, 0.291, and 1.3 of the Commission’s rules, 47 CFR §§ 0.91, 0.291, 1.3, that this Order IS ADOPTED.

10. IT IS FURTHER ORDERED that the petition for waiver of 47 CFR § 54.308(e) filed by NTCA—The Rural Broadband Association is DENIED.

²⁷ *Enhanced A-CAM Order* at 49, para. 113.

²⁸ *Id.* at 49, para. 114.

²⁹ *Id.* at 49, para. 112.

³⁰ 47 CFR § 54.308(e)(4); *Enhanced A-CAM Order* at 47, para. 111; NIST, The NIST Cybersecurity Framework 2.0, (Aug. 8, 2023), <https://csrc.nist.gov/pubs/cswp/29/the-nist-cybersecurity-framework-20/ipd> (NIST CSF 2.0).

³¹ NIST CSF 2.0; *Wireline Competition Bureau Announces Enhanced Alternative Connect America Cost Model Support Amounts Offered to Rate-of-Return Carriers to Expand Rural Broadband*, WC Docket No. 10-90, Public Notice, DA 23-779 (WCB Aug. 30, 2023).

³² NIST, Framework for Improving Critical Infrastructure Cybersecurity, v.1.1 (2018), <https://nvlpubs.nist.gov/nistpubs/CSWP/NIST.CSWP.04162018.pdf>.

³³ 47 CFR § 54.308(e)(6); *Enhanced A-CAM Order* at 48-49, para. 112.

11. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 CFR § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader
Chief
Wireline Competition Bureau